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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/743,844	12/22/2003	Debra N. Welchel	20193	9083

23556 7590 12/15/2004

KIMBERLY-CLARK WORLDWIDE, INC.
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EXAMINER

BOLLINGER, DAVID H

ART UNIT	PAPER NUMBER
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3653

DATE MAILED: 12/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/743,844

Applicant(s)

WELCHEL ET AL.

Examiner

David H Bollinger

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-34 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 August 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: ____.

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1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1 through 34 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The use of the terminology "configured" throughout the claims is indefinite as such terminology does not define a specific structure, therefore; when employed in the claims it is not understood what structure is to be encompassed by such language.

Claims 12, 24 and 33 are indefinite because it is unclear from what the housing is constructed. It is not understood how the housing is constructed of all the recited materials as well as any combination of the material simultaneously as these claims appear to require.

Claim 34 is indefinite because it recites both elements of an apparatus and steps of a method for using the apparatus, therefore; the claim is ambiguous as to whether an apparatus or a method is being claimed.

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claim 34 is rejected under 35 U.S.C. 101 because the claim recites both the structure of an apparatus and steps of a method for using the apparatus, therefore; the

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claim is considered directed to neither a "process" or a "machine", but rather embraces or overlaps two different statutory classes of invention set forth in 35 USC 101 which is drafted so as to set forth the statutory classes of invention in the alternative only. See MPEP 2173.05(p).

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1, 2, 6 through 10, 12 through 15, 18 through 22, 24 through 27, 30, 31, 33 and 34 are rejected under 35 U.S.C. 102(b) as being anticipated by Shapiro.

Note Figures 1 and 3 in particular. The housing of Shapiro is capable of being set on table for use or as shown in Figure 3 suspended from the spindle of a fixture.

6. Claims 1 through 10, 12 through 22, 24 through 31, 33 and 34 are rejected under 35 U.S.C. 102(b) as being anticipated by Sauer et al.

See Figures 1 through 6. The housing of Sauer et al is capable of being set on a table top for use or suspended from the spindle of a fixture (see Figures 1, 1A, 3, 4 and 5). With regard to claims 5, 17 and 29 Figure 3 of Sauer et al show a housing which may be considered disposed at an oblique angle relative to a vertical support surface when couple to a fixture.

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

9. Claims 11, 23 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sauer et al in view of Ponsi et al.

Sauer et al as interpreted above in paragraph 6 teaches everything except the housing including a resealable cover.

Ponsi et al teaches providing a dispenser with a resealable cover 24 (see column 3 lines 1-14) for the dispensing opening.

It would have been obvious to one of ordinary skill in the art to provide the dispenser of Sauer et al with a resealable cover of the dispensing opening as taught by Ponsi et al. This would provide additional protection from contamination for the articles contained in the housing.


10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David H Bollinger whose telephone number is 703-308-

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1113. The examiner can normally be reached on Monday through Friday from 9:00 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Donald Walsh, can be reached on 703-306-4173. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


David H. Bollinger
Primary Examiner 12/12/04
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